

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Longville Analyst: Roger Lackey Bill Number: AB 1001

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: May 8, 2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: California Spaceport Development Zone Act Of 2001

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 19, 2001.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 19, 2001. STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would:

- Require the Trade and Commerce Agency (TCA) to designate spaceport development zones.
- Allow certain taxpayers in a spaceport development zone to claim multiple income tax incentives.

This analysis will address the TCA provisions of the bill only as they impact the department's programs and operations or state income tax revenue.

SUMMARY OF AMENDMENTS

The May 8, 2001, amendments did the following:

- Limited the number of spaceport development zones that may be designated to five.
- Limited spaceport developments zones to a life span of 40 years from the date of designation.
- Defined "taxpayer" in the spaceport development zone tax incentives as meaning a person or entity conducting trade or business within a spaceport development zone that is primarily engaged in launch related activities.
- Changed the operative date of the spaceport development tax incentives to January 1, 2002.
- Limited the spaceport development tax incentives to apply to only that portion of the taxpayer's trade or business located within the spaceport development zone that is directly engaged in launch-related activities.

Board Position:

<u> </u> S	<u> </u> NA	<u> </u> NP
<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director

Date

Brian Putler

05/22/01

As a result of the May 8, 2001, amendments, a number of the department's implementation considerations and one of the policy considerations have been resolved. The remaining implementation considerations and policy consideration are included below for the author's convenience.

Except for the discussion of this analysis, the department's analysis of the bill as amended April 19, 2001, still applies.

IMPLEMENTATION CONSIDERATIONS

For a business to be eligible for the tax incentives, the business must be primarily engaged in launch-related activities and may only use the spaceport development incentives for those portions of the business that are directly engaged in those activities. The meaning of the terms "business" and "directly engaged" are unclear. If it is the author's intent to limit the spaceport development incentives to business activities and income directly attributable to launch related activities, the bill should clearly state as such. Without clarification, these limitations will complicate implementation and administration of the bill.

The hiring credit provision of the bill mirrors portions of the existing hiring credit for other economic development areas (EDA); however, the language of the bill does not include the criteria for "disadvantaged and disabled" employees. It is unclear if this was an oversight, or if it was the author's intent to exclude these criteria.

The hiring credit and the employee wage credit define the term "qualified employee" both for purposes of credit eligibility and for exclusion from eligibility. These definitions impose the additional requirement that the employer obtain certification that the employee meets the elements for a "qualified employee." This certification must be obtained from the Employment Development Department, the local county or city Job Training Partnership Act administrative entity, or the local county GAIN office or social service agency, as appropriate. While the bill does not specifically require that certification be obtained to meet the general eligibility requirements to claim the credit, the department has interpreted this same phrase in other hiring credits to require certification, otherwise the credit is denied.

Moreover, there have been circumstances where taxpayers have been unable to obtain a required certification for similar incentives for reasons related to eligibility (for example, if the certifying agency is not providing certifications). It is unclear in those circumstances whether the taxpayer would be eligible for the credit in the absence of obtaining the certification.

To avoid the same ambiguity that exists with other hiring credits, the author may wish to clarify his intent with respect to the certification requirement of each credit. The department can provide language to clarify the author's intent in this area.

The 40% business expense deduction for qualified property contains a recapture provision. It specifies that the deduction shall be recaptured if the property ceases to be used within the spaceport development zone "at any time before the close of the second taxable year after the property is placed in service." The department would interpret this recapture provision in a manner consistent with the Legislature's original intent for calculating the recapture period for similar incentives. It was the Legislature's intent then to look to the last day of the taxable year in which the qualified property was placed in service and then add two more taxable years after that date to determine the recapture period.

The recapture period also may be interpreted to begin in the taxable year the property was placed in service and require only two taxable years to thereafter close to satisfy the recapture provisions. Under the second interpretation, the first taxable year would be the taxable year the property was placed in service. The author may wish to clarify his intent on this issue to resolve any confusion that may occur between the FTB and taxpayers in regard to the proper interpretation.

ARGUMENTS/POLICY CONCERNS

Federal law prohibits discriminatory state taxation of interest on federal securities. This bill would allow a deduction related to interest received by lenders that lend money to taxpayers engaged in a trade or business in a spaceport development zone. This incentive, which provides a subsidy to non-federal securities, could be considered to result in a violation of the federal law prohibiting discriminatory state taxation of interest on federal securities.

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